



Planning Commission Agenda Report

Meeting Date 12/5/19

File: UP 19-22

DATE: November 20, 2019

TO: Planning Commission

FROM: Dexter O'Connell, Associate Planner. (530) 879-6810
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RE: Use Permit 19-22 (Wireless Telecommunications Facility at Oleander)
1575 Oleander Avenue. APN 003-041-002

Recommendation:

Staff recommends that the Planning Commission adopt Resolution 19-18 finding that this project is categorically exempt from further environmental review and approving Use Permit 19-22 (Verizon Wireless at Oleander) based on the findings below and subject to the recommended conditions of approval.

Background and Analysis

This is a request for a Use Permit to allow a 114.5-foot-tall wireless tower in the form of a faux water tower to be constructed at 1575 Oleander Avenue, in an Office Residential (OR) zone district, pursuant to the requirements for a Use Permit outlined in Chico Municipal Code Sec. 19.78.060.B. The proposal also includes associated site improvements and erection of a temporary monopole cell phone tower.

The site consists of two parcels, the principal location of major construction is designated Office Mixed-Use (OMU) on the General Plan Land Use Diagram and located within the Office Residential (OR) zoning district. That subject parcel, at the southwest corner of Oleander Avenue and East Sixth Avenue, is about four-tenths of an acre. Some minor ancillary facilities exist on an adjacent property designated Public Facilities and Services (PFS) on the General Plan Land Use Diagram and zoned Public and Quasi-Public Facilities (PQ). The site is in an area that is predominantly residential to the east, north, and south, (though zoning to the north and south allows a mixture of uses) and predominantly commercial to the west, where properties front along The Esplanade (see **Attachment B**, Location Map, and **Attachment D**, Plat to Accompany UP 19-22).

The existing site is characterized by an old water tower of 122.3 feet in height whose tank is over 50 feet in diameter. The tower, long since disused for its original purpose, has been used as a platform for cellular antennas for some time. The site also has cell phone equipment shelters. Along with the new permanent tower (which would be of somewhat lower height and would feature significant additional structural components to brace the false tank) there are minor ancillary site improvements proposed.

Authorization of the Use Permit would allow the new tower to be constructed. It would also authorize a temporary tower to be put in place for the duration of construction. While the demolition of the existing water tower would not be approved by this Use Permit, no public hearing review is required for that demolition to take place. Condition #10 requires that if the

temporary tower is constructed, it shall be removed within 30 days of final Planning inspection for the new permanent tower.

Discussion

While a cell tower is not a permitted use in the OR zone district, pursuant to CMC 19.78.060.B, *“in all zones in which a new telecommunications tower is listed as NP (not permitted), such a facility may nevertheless be permitted by use permit if the planning commission makes the findings required by section 19.78.100.”* As described in the applicant’s announcement of the neighborhood meeting (**Attachment J**), the new tower is necessary because of seismic concerns related to the existing water tower. While the most recent major earthquake in the Chico area was in 2013 and seismic activity and risk are very low, particularly on the flat ground outside of the foothills,¹ preparedness is important and the maintenance of cell signals in an emergency is critical to public safety.

The existing Cal Water tank tower currently houses several antennas owned by T Mobile and Verizon Wireless. Cal Water recently determined that the tank does not meet current earthquake standards. The proposed new tower would be “co-locatable” for other wireless carriers to mount antennas and equipment upon, and both existing providers propose to locate antennas within the proposed new tower’s tank. (see **Attachment F**, Tank Elevations)

As required by the City’s Wireless Telecommunications Facility (WTF) regulations (CMC 19.78), this application was reviewed by Sherry Miller, the City’s Airport Manager. Airport Manager Miller reviewed the project and determined “The Airport Manager does not oppose the proposed project as it will be lower than the current equipment.” Special painting or lighting for aircraft identification is not required, and is specifically prohibited (pursuant to CMC 19.78.120.A.2) to minimize visual impacts.

Pursuant to Sec. 19.78.130.A.1 of the Chico Municipal Code, *“all use permits for wireless telecommunications facilities shall be issued for a period of ten years.”* Condition #9 has been added to implement this requirement.

Tower Location and Design

The applicant has sited the proposed tower on the easterly portion of a small site developed with a large water tower. The proposed new tower would be located approximately 75 feet northeast of the proposed-for-demolition Cal Water tank tower located in the western half of the property. A geographical service area map (see **Attachment E**, Service Area Map) provided by the applicant indicates that the new tower would cover nearly the same or a slightly larger service area as the existing water tank tower, which is currently the primary tower serving this area of the City. This location in conjunction with the proposed height of approximately 115 feet would provide equal-or-better wireless coverage to this service area.

¹ Wong, Ivan G. “Earthquake Activity in the Sacramento Valley, California and Its Implications to Active Geologic Structures and Contemporary Tectonic Stresses” In *Structural Geology of the Sacramento Basin: 1992 Pacific Section Annual Convention*, 1992. Pages 5-14. Sacramento, CA: Pacific Section of AAPG

The proposed faux water tank is a design that has been used in a variety of locations, primarily for installations in the built-up urban areas of small towns. According to a leading manufacturer of cell tower camouflage systems, the faux water tank tower is both common and rapidly growing as a concealment method, particularly in the western states.² This type of tower will have the visual appearance of a metal water tower similar to those found in other areas of the City, though substantially dissimilar to the one proposed for demolition on this property (see **Attachment F**, Tank Elevations). The proposed antennas reach 110 feet in height under the water tower cap that extends the total height of the tower to about 115 feet. The existing antennas have a centerline at about 92 feet, while the lower set of the proposed new antennas (those belonging to T Mobile) will have a centerline at 96 feet (see **Attachment F**).

The visual simulations provided by the applicant assist in depicting the proposed tower. Upon prolonged examination, it is easily discernible that the proposed structure is an artificial tank. However, the many steps taken by the applicant to propose a tower faithful to the appearance of similar towers in Chico give it a not-unpleasant appearance. This form and imagery will assist in the proposed tower fading into the background for the vast majority of observers (see **Attachment G**, Visual Simulation).

A deviation from development standards (**Attachment I**) is proposed to use two colors instead of one in the design of the proposed faux-tank tower. This is because Cal Water towers feature metallic silver tanks with legs in a distinctive British Racing Green color, and neighborhood comment suggests that this would be the most easily-accepted style of faux tower. Condition #7 addresses the issue of color specifically and requires the proposed tower to be of the highest aesthetic quality.

A chain-link fence exists at the site and no change is proposed. In the event that changes in fencing are proposed at the site at some point as part of this project, Condition #3 requires administrative architectural review of any new fencing and limits the fence height to six-feet in height in compliance with CMC 19.60.060.

While it does not appear that any trees will be removed as a consequence of this project, Condition #5 is added to require the applicant to mitigate for any tree removal, pursuant to Chico Municipal Code Section 16.66. A small number of bushes and shrubs provide additional screening of ground-mounted equipment (see **Attachment D**, Plat to Accompany UP 19-22).

Neighborhood Meeting

A neighborhood meeting for this project was held on July 10, 2019. The applicant solicited feedback about a variety of factors involved in this application. City staff, representatives of both cellular companies involved in the project, and representatives of Cal Water were

² Staff interview of Mark Schmidt of Larson Camouflage on 10/15/2019. Mr. Schmidt stated that the faux water tower was, after tree styles, the most popular and by far the fastest-growing concealment style for wireless telecommunications facilities. He specifically stated that California, Colorado, and Arizona were the most common locations for this style, and discussed the most common locations for placement of that style of concealment device.

present, along with about 10 neighbors. The application was described, and concerns about viewsheds and the type of housing available in the neighborhood were raised. The applicant asserts that some of the concerns raised in the meeting have been addressed by alterations to the application. The meeting lasted about one hour.

Ground Mounted Equipment and Noise

All equipment associated with the project including ground-mounted equipment cabinets, generators, backup radio batteries and air-conditioning units will be located within a fenced area. While there are many residences within the vicinity of the tower, the existing equipment has, to staff's knowledge, not caused a noise problem in the neighborhood and no relocation of noise-emitting ground-mounted equipment is proposed as part of this permit. Nevertheless, compliance with the City of Chico's noise limits, found in Chapter 9.38 of the Chico Municipal Code, will be required.

Radio Frequency (RF) Emissions

Exposure to radio frequency (RF) emissions, also known as electromagnetic field (EMF) emissions, is associated with the operation of Wireless Telecommunications Facilities (WTFs). RF emissions from WTFs are regulated by the Federal Communications Commission (FCC), pursuant to the Telecommunications Act of 1996. Existing City regulations require an analysis by a qualified RF engineer showing that the cumulative emissions of all proposed facilities comply with FCC standards concerning RF emissions. Information regarding measuring human exposure to radiofrequency energy can be found in **Attachment H** (Radio Frequency Report). The standards established by the FCC are based on recommendations from the Environmental Protection Agency; Food and Drug Administration; Occupational Health and Safety Act of 1970; and the National Institute for Occupational Safety and Health. They are set at a level many times lower than that which may pose a health risk.

In this case, the required radio frequency emissions compliance report prepared by Hammett & Edison Consulting Engineers (see **Attachment H**, Radio Frequency Report) shows that for accessible areas at ground level, the maximum cumulative radio frequency exposure levels resulting from all permanent operations is significantly less than the FCC General Population limits (3.5% of the cumulative level of exposure limits as described in **Attachment H**). The project complies with the standards. Condition 4 has been included to require FCC licensees operating this tower to comply with all FCC regulations related to staff training and alert signage.

If the proposed use permit is approved, the tower would comply with all City standards for new towers (see **Attachment I**, Development Standards). The primary purpose of the project is to provide a seismically-sound tower for wireless carriers to co-locate their antennas. No new service would be provided as a result of the new tower, though the slightly-higher location of the antennas might create a marginal improvement in service at certain points. As such, it is not legally necessary to approve this project to comply with the requirements of Federal law, but the proposed demolition of the existing Cal Water tank structure does mean that denying this Use Permit might create a situation where the City was in violation of the Telecommunications Act. The project will result in continued and uninterrupted signal

coverage in this area of Chico if the Cal Water tank tower is demolished.

Environmental Review

The project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15302 (Replacement or Reconstruction) as a replacement or reconstruction of an existing structure. The new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure to be replaced.

Findings

Following a public hearing, the Planning Commission may approve a Use Permit application, with or without conditions, only if all of the following findings can be made:

Use Permit Findings

- A. *The proposed use is allowed within the subject zoning district and complies with all of the applicable provisions of Chapter 19.24 (Use Permits).*

The Planning Commission may approve a Use Permit for the proposed Wireless Telecommunications Facility to be located in this zoning district. The Chico Municipal Code specifies that “*in all zones in which a new telecommunications tower is listed as NP (not permitted), such a facility may nevertheless be permitted by use permit if the planning commission makes the findings required by section 19.78.100.*” Those findings can be made, and are discussed below. Therefore, the proposed use is allowed within the zoning district with approval of a use permit and complies with all applicable provisions of the Chico Municipal Code.

- B. *The proposed use would not be detrimental to the health, safety, and general welfare of persons residing or working in the neighborhood of the proposed use.*

In this case, the required radio frequency emissions compliance report prepared by Hammett & Edison Consulting Engineers (see **Attachment H**, Radio Frequency Report) shows that for accessible areas at ground level, the maximum cumulative radio frequency exposure levels resulting from all permanent operations would be significantly less than the FCC General Population limits (3.5% of the cumulative level of exposure limits as described in **Attachment H**). The project will not result in any significant noise impacts. While the proposed tower is a slight downgrade in historic and aesthetic quality from the existing one, it represents an improvement to the physical safety of the area due to its seismic stability. No other impacts have been identified that would be detrimental to any person residing or working in the area.

- C. *The proposed use would not be detrimental and/or injurious to property and improvements in the neighborhood of the proposed use, as well as the general welfare of the City.*

The project will comply with all applicable building and improvement regulations and standards. The unstaffed facility would not generate vehicle traffic other than during installation and periodic maintenance. Access to the site is provided by an existing driveway located on Oleander Street which would be improved as part of this project. The project will not cause any damage or otherwise be injurious to property or improvements in the neighborhood, and will not be detrimental to the general welfare of the City.

- D. *The proposed entitlement is consistent with the General Plan, any applicable specific plan, and any applicable neighborhood or area plan.*

The proposal is consistent with General Plan Goals and Policies including ED-1.2.2 supporting adequate infrastructure, ED-1.6 promoting excellent wireless telecommunication services, and S-5.5 supporting the deterrence of crime through site planning and community design.

- E. *The design, location, size, and operating characteristics of the proposed use are compatible with the existing and future land uses in the vicinity.*

The proposed design complies with CMC Section 19.78, which governs wireless telecommunications facilities. As required by CMC 19.78, the tower is available for other wireless carriers to co-locate their equipment upon, (and a colocation is actually proposed as part of this application) minimizing the overall number of towers in the area. With its faux water tower design, the project will be evocative of existing uses on the site while not making a stark change to what likely future users would expect from the site.

Additional Findings Required by Chico Municipal Code Sections 19.78.060.B and 19.78.100

- F. *The facility to be permitted will not generate EMF/RF radiation in excess of the FCC adopted standards for human exposure.*

The required radio frequency emissions compliance report prepared by Hammett & Edison Consulting Engineers (see **Attachment H**, Radio Frequency Report) shows that for accessible areas at ground level, the maximum cumulative radio frequency exposure levels resulting from all permanent operations would be significantly less than the FCC General Population limits (3.5% of the cumulative level of exposure limits as described in **Attachment H**). The project complies with the FCC standards.

- G. *If the height of the facility exceeds the standards set forth in Section 19.78.120, that the facility has been designed to minimize its height and other visual effects.*

CMC 19.78.120 states "if the telecommunications tower is more than 100 feet in height, it must be designed at the minimum height functionally required." While the tower is designed to be approximately 114.5 feet tall, that height is based on community requests for a faux water tank evocative of the shape and style of similar water tanks in the Chico area. The antennas themselves are mounted with centerlines of about 96 and about 106 feet, meaning that the functional height must be over 100 feet in any

case, but the additional height creates an improved aesthetic appearance and is based on community concern related to minimizing visual effects.

- H. *The facility does not encroach into navigable airspace as defined by Part 77 of Title 14 of the Code of Federal Regulations.*

Per City of Chico Airport Manager Sherry Miller, "The Airport Manager does not oppose the proposed project as it will be lower than the current equipment." The proposed tower does not encroach into navigable airspace.

- I. *For a wireless telecommunications facility which will be located in any zoning district in which such a facility is generally not permitted:*

- a. *The applicant has demonstrated, based on technical necessity, that the facility must be located within one of those zoning districts in order to provide the service; and*

The applicant's technical analysis strongly indicates that moving the location of the tower to a property other than the proposed site would result in a decrease in quality of cellular service. Therefore, it appears that it must be located in this zone district in order to provide the same level of wireless telecommunications service.

- b. *The denial of a use permit to allow a facility in one of those zoning districts would constitute a prohibition of the affected wireless telecommunications services in violation of federal law; and*

Requiring the wireless telecommunications services to be provided at a different location could potentially be construed as a prohibition of adequate wireless telecommunications service to those who received a lower level of service due to the location change, thus potentially constituting a violation of federal law.

- c. *If the facility is proposed to be located in a residentially-zoned district, the applicant has demonstrated, based on technical requirements, that the service cannot be provided by locating the facility in a non-residential zone.*

The operable development standards for the Office Residential (OR) zone district focus primarily on office and commercial development, while residential development is permitted with the approval of a Use Permit. Therefore, the OR zone district is primarily a non-residential zone district.

Furthermore, the proposed tower would replace existing wireless facilities on this parcel and in this same zone district.

- J. *A finding of technical necessity to locate in a particular zoning district shall only be made if the planning commission finds that, based on the operational capabilities of the type of equipment used to provide the service, it is not possible to provide substantially the same additional services by locating one or more facilities in alternative locations outside of that district.*

Due to the unique circumstances of the location of the existing water tower-based cell antenna site, and the way that the network of surrounding cell towers provide coverage in a complimentary and overlapping way, it is likely not possible to provide substantially the same services as currently exist at a different location. Additionally, other restrictions might be applicable at another location. It is unlikely that substantially the same services could be provided by locating one or more facilities in alternative locations.

PUBLIC CONTACT

A 10-day public hearing notice was mailed to all landowners and residents within 1000 feet of the site, and a legal notice was published in the *Chico Enterprise Record*.

Distribution:

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File: Use Permit 19-22

External

File UP 19-22
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Attachments:

- A. Resolution No. 19-18
Exhibit I - Conditions of Approval
- B. Location Map
- C. Aerial Photo
- D. Plat to Accompany Use Permit 19-22
- E. Service Area Map
- F. Tank Elevations
- G. Visual Simulations
- H. Radio Frequency Report
- I. Excerpt of CMC 19.78.120.A., Development Standards for New Telecommunications Towers
- J. Neighborhood Meeting Notice
- K. Airport Manager's Findings